Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-342

In re Applications of

LOWREY COMMUNICATIONS, L.P.	File No. BPH-881026MC
NORTH GEORGIA RADIO II, INC.	File No. BPH-881026MD
RADIO CENTER DALTON, INC.	File No. BPH-881026MK

For Construction Permit for a
New FM Station on Channel 283A
in Dalton, Georgia

Appearances

Denise B. Moline, Esq. on behalf of Lowrey Communications, Limited Partnership; *Gary S. Smithwick, Esq.* and *Lisa Thornton, Esq.* on behalf of North Georgia Radio II, Inc.; *Frank J. Martin, Esq.* and *Elizabeth C. Buckingham, Esq.* on behalf of Radio Center Dalton, Inc.; *Charles Dziedzic, Esq.* and *Robert Zauner, Esq.* on behalf of the Chief, Mass Media Bureau, Federal Communications Commission.

INITIAL DECISION OF
ADMINISTRATIVE LAW JUDGE
RICHARD L. SIPPEL

Issued: January 29, 1992; Released: February 7, 1992

PRELIMINARY STATEMENT

1. This proceeding involves the mutually exclusive applications of three applicants: Lowrey Communications, L.P. ("LCLP"); North Georgia Radio II, Inc. ("NGRI"); and Radio Center Dalton, Inc. ("RCDI"). These three applicants are competing for the award of a Commission permit to construct a new FM Station on Channel 283A at Dalton, Georgia.

2. The *Hearing Designation Order ("HDO")* DA 90-994, released August 1, 1990, reported at 5 F.C.C. Rcd 4822 (MM Bur. 1990) and published at 55 Fed. Reg. 33380 (released August 15, 1990) sets the standard comparative issues for adjudication as follows:

> (a) To determine which of the proposals would, on a comparative basis, best serve the public interest.
>
> (b) To determine, in light of the evidence adduced pursuant to the specified issue, which of the applications should be granted, if any.

The party applicants have the burdens of proving their proposals by a preponderance of the evidence. *Cuban-American, Ltd.*, 5 F.C.C. Rcd 3781, 3785 (Comm'n 1990). *See also Steadman* v. *SEC*, 450 U.S. 91 (1981).

3. In the course of this proceeding, the following issues were added by the Presiding Judge against LCLP:

> (c) To determine whether Capital Radio Services, Inc. was an undisclosed principal to the application of LCLP.
>
> (d) To determine whether the structure of LCLP was a "sham" application when it was filed, or at any time thereafter.
>
> (e) To determine whether LCLP possesses the basic qualifications to become a licensee of the FM Station allocated for Dalton, Georgia.

Memorandum Opinion and Order, FCC 91M-1686, released May 22, 1991.

4. After extensive discovery the added issues were resolved in favor of LCLP in a summary decision of the Presiding Judge based on cross-motions and allied papers. *See Memorandum Opinion and Order* FCC 91M-3360, released December 2, 1991 (referred to as the "*MO&O*"). The findings and conclusions of the *MO&O* constitute a part of the ultimate findings and conclusions in this *Initial Decision*.

5. The first prehearing conference was held on October 3, 1990. The trial on the standard comparative issue was conducted on January 23, 24 and 25, 1991. A motion to enlarge issues against LCLP, filed by NGRI on January 8, 1991, was pending after the first hearing phase was concluded. The record on the standard comparative issue was closed on February 8, 1991. *Order* FCC 91M-355, released January 30, 1991. The parties were directed to file Proposed Findings of Fact And Conclusions Of Law ("PFC") on March 15, 1991, and Reply Proposed Findings Of Fact And Conclusions Of Law ("RPFC") on April 9, 1991. (*Id.*)

6. The parties presented a Joint Stipulation on signal coverage in open court on the first day of trial, January 23, 1991. The stipulation was based on the affidavit of an engineer which established that there are no significant differences in the areas and populations to be served by the three applicants in their respective engineering proposals. (Jt. Engineering Exh. 1.) Bureau counsel stated that the Bureau had no objection to the stipulation being received into evidence. (Tr. 27-28.) Since the comparative coverage issue was met by the stipulation there was no requirement for the Bureau to submit proposed findings.

7. After discovery, a second prehearing conference was held on September 23, 1991, to consider whether the issues that had been added against LCLP could be disposed of by summary decision. *Order* FCC 91M-2902, issued September 19, 1991.[1] A Motion For Summary Decision had been filed by LCLP on September 13, 1991, a date which met the time for filing such motions before the trial that had been set to commence on October 7, 1991 (FCC 91M-1686). After hearing oral argument of counsel and after considering fully the efficiencies that

might be gained, the Presiding Judge cancelled the Phase II trial and permitted summary decision on cross-motions. *See Order* FCC 91M-2919, released September 25, 1991.

FINDINGS OF FACT

8. Since the applications are mutually exclusive, a consolidated factual hearing was conducted on all issues remaining for trial wherein the parties presented evidence and conducted cross-examination. *Ashbacker Radio Corp.* v. *F.C.C.*, 325 U.S. 327, 333 (1945); *U.S.* v. *Storer Broadcasting Co.*, 351 U.S. 192, 202 (1956) (parties have right to present oral and documentary evidence and to conduct cross-examination).

Standard Comparative Issue

9. The matters for determination under the standard comparative issue are which of the integration proposals would, on a comparative basis, best serve the public interest [*HDO* at Para. 7(1)]; and, in light of the evidence adduced relating to that issue, which of the applications should be granted [*HDO* at Para. 7(2)]. *Policy Statement On Comparative Broadcast Hearings*, 1 F.C.C. 2d 393, 394 (1965).

Media Diversification

LCLP

10. LCLP and its general partner do not own an attributable interest in any medium of mass communications. (LCLP Exh. 2 at 1.)

NGRI

11. NGRI'S shareholders own a controlling interest in the shares of Station WBLJ(AM) in Dalton, Georgia. The stockholders have pledged to divest their stockholdings in Station WBLJ(AM) in the event NGRI receives the grant in this case. (NGRI Exh. 3.) Therefore, NGRI has no attributable media interest.

RCDI

12. RCDI is the licensee of daytime Station WLSQ(AM), Dalton, Georgia. RCDI has pledged timely to divest Station WLSQ(AM) if it is awarded the grant in this case. Such divestiture would be effected within three years after receiving FM test authority. (RCDI Exh. 1.) Therefore, RCDI has no attributable media interest.

Best Practicable Service

Lowrey Communications, L.P.

Proposed Integration

13. LCLP is a limited partnership formed and organized under the laws of Georgia. Jean S. Lowrey ("Lowrey"), its general partner, owns 100% of the partnership's voting control and 24.95% of the equity.[2] There are fourteen limited partners owning 75.05% of the equity in percentages ranging from 3.95% [11] to 7.90%[1] and 11.85%[2]. Thirteen of the limited partners have addresses in Dalton. Ms. Lowrey also resides in Dalton. One limited partner resides in Chatsworth, Georgia which is located close to Dalton. (LCLP Exh. 1 at 1-2.)

14. LCLP's application Form 301 was filed on October 26, 1988. The Certificate of Limited Partnership was signed by all of LCLP's partners on October 10-12, 1988, which was a period of time that preceded the filing of the application. (LCLP Exh. 1 at 3-23.) The Articles of Limited Partnership also were fully executed before the application was filed. (LCLP Exh. 1 at 26-52.) The Articles preclude the limited partners from exercising any control over the conduct of LCLP's business. (LCLP Exh. 1 at 37-38.) The evidence failed to disclose any incident or circumstance of control being exercised by a limited partner.

15. While Ms. Lowrey played an active role in soliciting local citizens of Dalton to invest in the venture, she was not without outside assistance of a significant nature. The facts, discussion and conclusions of the *MO&O* on summary decision, as specifically incorporated in these findings, are set forth in Paras. 16 to 22 below.

Capital's Role

16. It was found by the Presiding Judge that in September 14, 1988, forty-two days before filing, Lowrey had entered into a written "Owner/Manager Service Agreement" with Capital Radio Services, Inc. ("Capital"). (NGRI Exh. 18.) Capital's president at the time was Carl W. Hurlebaus ("Hurlebaus"). *See* fn. 1, *supra*. Capital held itself out as a general contractor that provided, for a fee, turnkey broadcast application services. Capital had determined the allocation of the Dalton FM frequency through its monitoring of Docket 80-90 allotments.

17. Before approaching Lowrey, Capital had, through its agents, made preliminary contacts with potential investors in a possible local venture group that included Lowrey's father, Pleas Smith, Jr. It was through Mr. Smith and his friend, Dr. William A. Blackman, that Capital's agents located and contacted Lowrey and solicited her to become the integrated manager of the venture.[3] Smith did not become an investor. But Blackman invested as a limited partner. Capital did not seek to acquire an equity interest.

18. Findings of the *MO&O* reflect that Capital never had an equity interest in the Dalton venture. Nor was there any evidence of an agreement to assign the station to Capital. Although Capital recommended two law firms, the evidence discloses that Lowrey contracted independently of Capital for the legal service of LCLP's attorneys. There is no evidence that Capital received copies of documents or correspondence and it is found that there was no oversight exercised by Capital with respect to legal services. It is further found that LCLP was not a front for Capital or that LCLP had filed a "sham" application. (*MO&O* at Para. 23.)

19. Capital had initially arranged for engineering. Lowrey did not contact the engineer with respect to the venture's first site, which later proved to be inadequate, and the rights to the site were assigned to Capital and then reassigned by Capital to LCLP. (*MO&O* at Para. 15.) But after the application was filed and the initial engineering work was found to be defective, Lowrey assumed full control of prosecutorial functions to correct the situation. By August 24, 1989, ten months after the

application was filed and eleven months after the Agreement was signed, Lowrey had terminated Capital's services thereby removing all vestiges of Capital's control.

20. At or about the time that Lowrey contracted with Capital, she paid Capital $5,550 by her personal check and she signed a conditional promissory note for $17,500 which ultimately was cancelled.[4] During the period of the ongoing contractual relationship, Lowrey gave Capital control over the receipt and disbursement of $82,500 which represented monies raised from limited partners. It was found:

> In view of the short period of time between contracting under the Capital Agreements and the time that the application was filed, and in view of Lowrey's reliance on Capital to obtain a site and to pay filing fees to the Commission, the evidence shows that Capital shared control with Lowrey over LCLP's application process through the application's filing on October 26, 1988.

(*MO&O* at Para. 11.) In view of commingling by Capital and the lack of any internal audit or other control procedures, the monies "escrowed" by LCLP with Capital were found to be controlled by Capital until Capital's service contract was terminated. (*MO&O* at Para. 13.) Evidence of control was found in the record presented for summary decision. Hurlebaus testified in a deposition that Lowrey had confirmed Capital's right to make non-approved expenditures. (Depo. at Tr. 206.) (*MO&O* at Para. 14.) Capital also converted accrued interest and paid the taxes on that interest which was earned on LCLP's monies that were maintained in Capital's commingled account. (*MO&O* at Para. 14.) From these monies, Capital allocated to itself the sum of $38,500. That sum included Capital's fee of $23,050 and the payment by Capital of the Commission's filing and hearing fees and initial engineering. (*MO&O* Para. 13 n. 6.)

21. There was also evidence considered showing that Lowrey otherwise acted independently. When a second site owner was contacted, Lowrey made the contact without any assistance from Capital. Lowrey selected an air hazard consultant that had been recommended by legal counsel. (*MO&O* at Para. 15.) She also worked directly with counsel on LCLP's Form 301 application. She arranged for LCLP's loan letter. And she ultimately fired Capital. (*MO&O* at Para. 16.) In addition, it is found based on hearing evidence that Lowrey personally confirmed availability of the transmitter sites through telephone contacts with two site owners, with the site locator, and with the engineer. (Lowrey, Tr. 133-41, 334, 336.) She did not use financial services that were offered by Capital and she engaged an accountant for the preparation of the partnership's tax returns. (Lowrey, Tr. 54, NGRI Exh. 25.) She also personally prepared the construction and operating budgets. (Lowrey, Tr. 145.)

22. There was control by Capital in the venture's promotional stage over the selection of limited partner investors and the selection of Lowrey as general partner. Signed agreements of limited partners with Capital were transmitted by Hurlebaus to the investor - partners and the transmittal letter was prepared by Capital and not by Lowrey. (NGRI Exhs. 6-8, 12, 14 and 17; Lowrey, Tr. 217.) Lowrey admitted that she used a questionnaire prepared by Capital in connection with her efforts to solicit limited partners and she acknowledged that the agreements of the limited partners with Capital were prepared by Capital. (Lowrey, Tr. 88, 93.) Capital's agent, Styles E. Caldwell, accompanied Lowrey in visiting each limited partner to secure signatures and to obtain check payments. (Lowrey, Tr. 102.) Thus, Capital was an active promoter. There also was prosecutorial control exercised by Capital over the first "turnkey" engineering. Based on such evidence the Presiding Judge found:

> There was early-on control exercised by Capital through the application filing stage. But there is no evidence of Capital's participation in the prosecution of the application after it was filed on October 26, 1988. The escrow relationship was terminated on August 24, 1989, after which Capital had no connection with the venture.

(*MO&O* at Para. 16.)[5]

Quantitative Integration

23. Lowrey proposes to be integrated full time, a minimum of 40 hours per week, on a daily basis as general manager of the station. In that capacity she will be responsible for day-to-day supervision of station operations, overall format, general programming, public interest programming, sales, personnel, promotion, public relations, and accounting. She also will be responsible for compliance with all pertinent local, state and federal regulations. Station management personnel will report to Lowrey. She will hire and fire all station personnel and she will be responsible for all of the station's sales contracts. She will be responsible for ascertainment of community needs and interests in connection with the station's obligation to provide public interest and community programming, and she will establish and maintain liaisons with civic leaders and community groups in order to determine the programming needs of the community and of the specific groups in the community. (LCLP Exh. 3 at 1; Lowrey, Tr. 284.)

Broadcast Experience

24. LCLP claims credit for Lowrey's summer employment in 1970 as receptionist and traffic news announcer at Station WBLJ(AM) in Dalton. LCLP also claims credit for her broadcast summer intership in 1971 at Station WTTI(AM) as a news and public affairs announcer.[6] (LCLP Exh. 3 at 4.)

Local Residence

25. Lowrey was born in Dalton and resided there continuously until she attended college from 1968 to 1972. She resided in LaGrange, Georgia from 1972 to 1974. Thereafter, she resided in Dalton continuously to the present. (LCLP Exh. 3 at 2.)

Civic Activities [7]

26. In 1975, Lowrey served as Communications Chairman of the Dalton-Whitfield Bicentennial Commission. In 1976, she produced a slide presentation for the Cheerhaven School for the Mentally Retarded. She also served as Publicity Chairman for the Creative Arts Guild Firehouse Festival. (LCLP Exh. 3 at 2.)

27. From 1977 to 1982, Lowrey served as Secretary to the Board of Directors of the Voluntary Action Center. In 1980, she was the Public Relations Career Representative for the Dalton Rotary Club Career Education Project. From 1980 to 1983, Lowrey served on the Board of Directors of the United Way of Whitfield County. From 1982 to 1984, she served on the Board of Directors of the Whitfield County Mental Health Society. (LCLP Exh. 3 at 2-3.)

28. From 1987 to 1990, Lowrey served on the Board of Directors of the First Presbyterian Church Child Care. From 1988 to 1989, she served on the Board of Directors of the Rock Hill School Kindergarten. In 1989, she served on Project 2000: North Georgia Regional Development Center Task Force on Land Use and Housing. And from 1989 to the Present, Lowrey has been a member of the Organizing Committee for the Dalton Public Schools Alumni Association. (LCLP Exh. 3 at 3.)

29. Lowrey represents that she intends to continue her present civic activities in the community of license. Based on the dates set forth in her testimony, those present activities would be her work on the Organizing Committee of the Dalton Public Schools Alumni Association and her work with the Presbyterian Church in Dalton. (LCLP Exh. 3 at 4.)

Auxiliary Power

30. LCLP will install auxiliary generating equipment at the studio and transmitter sites to ensure continuous power in the event of power outages. (LCLP Exh. 4.)

North Georgia Radio II, Inc.

Proposed Integration

31. NGRI is a Georgia corporation with two classes of stock: voting and non-voting. Werner E. Wortsman ("Wortsman") is president, treasurer, sole director and holder of 400 shares of voting stock which comprises 100% of the voting stock. He also holds 40% of the equity of NGRI. Hansel L. Smith ("Smith") is Secretary of NGRI.

32. The other non-voting shareholders of NGRI are as follows:

Shareholder	Shares	Equity
Robert D. Fowler	150	15%
Lucia R. Smith	150	15%
Otis A. Brumby, Jr.	38	3.8%
Martha Lee Pratt Brumby	37	3.7%
Earl T. Leonard, Jr.	37	3.7%
Bebe Brumby Leonard	38	3.8%
Whitaker Trust[8]	150	15%

33. On February 13, 1989, NGRI was substituted for the original applicant, North Georgia Radio, Inc. as a new substitute corporate applicant. NGRI, the substitute corporation, was formed to enhance NGRI's comparative position. (Wortsman, Tr. 425-26.)

34. There are no contemplated future shareholders. None of the non-voting shareholders are officers, directors, or proposed to be employed by or to have any involvement in the media related activities of NGRI. (NGRI Exh. 1.) Wortsman will serve as full-time general manager of the proposed station. He will oversee construction of the station and thereafter he will supervise all aspects of the station's operations. All department heads will report to him. He will terminate any other employment or business interests he may have prior to the commencement of program tests. (NGRI Exh. 2.)

Broadcasting Experience

35. Wortsman has served as the general manager of Station WBIJ(AM), Dalton, Georgia since 1960. Through Wortsman NGRI achieves 31 years of broadcast experience.

Local Residence

36. From 1960 to the present, Wortsman has resided within the service area of the proposed station. (NGRI Exh. 2.)

Civic Activities

37. From 1988 to the present, Wortsman has been a lecturer on current events and books at the Dalton Public Library. In 1975, he was a member of the Board of Directors of the Creative Art Guild of Dalton, an organization in which he had been active from 1970 to 1980. (NGRI Exh. 2.)

38. Since 1960, Wortsman has been a member of Temple Beth El Dalton, Georgia. (NGRI Exh. 2.) There is no evidence of any related community activities or active participation in the Temple's congregational or community activities by Wortsman.

39. Wortsman was awarded the School Bell Award for 1973-74, from the Georgia Association of Educators. (NGRI Exh. 2.) There is no evidence of community services rendered by him in relation to the award. Wortsman also received an award in 1973 from the Whitfield County Board of Education and Whitfield County School Administration. (NGRI Exh. 2.) There is no evidence of community services rendered by him in relation to the award.

Auxiliary Power

40. NGRI proposes to install an auxiliary power source to insure the continuation of operations of the station in the event of an interruption of regular power. (NGRI Exh. 4.)

Radio Center Dalton, Inc.

Proposed Integration

41. RCDI is a Georgia corporation with an aggregate of 500,000 shares of authorized common stock. There are 250,000 shares which have been designated voting stock with 1 vote per share. There also are 250,000 shares which have been designated non-voting stock with no

vote. Of the 250,000 authorized voting common shares, 5,000 are issued and outstanding. Of the 250,000 non-voting common shares, 20,000 are issued and outstanding.

42. RCDI has five shareholders who hold voting and non-voting shares as follows:

Share-holders	Voting Shares	% Votes	Non-Voting Shares	% Equity
Gilbert H. Watts, Jr.	3,748	74.96%	2,502	25%
Calvin R. Means	1,000	20%	4,000	20%
Valeria W. Watts	250	5%	1,000	5%
Clifford K. Watts	1	.02%	6,249	25%
Virginia Alexandra Watts Hoyt	1	.02%	6,249	25%

43. From the filing of its application on October 26, 1988, until December 23, 1988, RCDI's shareholders held voting shares in RCDI as follows:

Share-holders	Voting Shares	% Votes	Non-Voting Shares	% Equity
Gilbert H. Watts, Jr.	6,250	25%	0	25%
Calvin R. Means	5,000	20%	0	20%
Valeria W. Watts	1,250	5%	0	5%
Clifford K. Watts	6,250	25%	0	25%
Virginia Alexandra Watts Hoyt	6,250	25%	0	25%

44. On December 23, 1988, pursuant to Commission approval of a *pro-forma* transfer of control, RCDI's shareholders exchanged certain common stock for voting and non-voting common stock. The *pro-forma* transfer of control was accomplished to improve RCDI's comparative position. (G. Watts, Tr. 583; Means, Tr. 634; G. Watts, Tr. 546.) As a result of the transfer, Clifford K. Watts ("C. Watts") and Alexandra Watts Hoyt ("Hoyt") transferred all their voting shares but one to Gilbert H. Watts, Jr. ("G. Watts"). All of the shareholders acquired non-voting stock in order to retain the same overall equity shares. (G. Watts, Tr. 543-45.) In connection with the stock transfer it was agreed on November 12, 1988, that C. Watts and Mrs. Hoyt would remain inactive principals.

45. As of the date of RCDI's application for the new FM station in Dalton, G. Watts held a power of attorney from C. Watts. (LCLP Exh. 9.) Valeria W. Watts ("V. Watts") also held a similar power of attorney from Hoyt. (LCLP Exh. 11.) The powers of attorney are not specific voting proxies for voting C. Watts' or Hoyt's shares in RCDI. But these powers do convey the power to G. Watts and to V. Watts to act as their attorney-in-fact in relation to any and all matters in which they might be interested or concerned. V. Watts, who is a Georgia attorney, testified that the power of attorney that was executed by Hoyt would constitute a general power of attorney under Georgia law. (V. Watts, Tr. 675.)

Quantitative Integration

46. G. Watts is proposed to work fulltime, i.e., forty hours or more per week, as the applicant's chief executive officer ("CEO"). In that capacity, he will be responsible for the financial, business management, and overall policy direction of RCDI. He proposes to carry out his functions in an office at the studio. (RCDI Exh. 1 at 4.) G. Watts has other business interests that must be accounted for in light of his proposed full-time integration. *See* Paras. 47 to 56, *infra*. The evidence establishes that there is no intention on the part of G. Watts to resign from any of these business commitments (G. Watts, Tr. 587) or from his civic activities. (RCDI Exh. 1; Para 73, *infra*.)

47. A family partnership doing business as Watts Agent ("Agent") is engaged in the business of owning and leasing real property. (RCDI Exh. 1 at 5.) G. Watts manages Agent's business which involves rental collections, maintenance and bookkeeping on seventy to one hundred different pieces of property. (G. Watts, Tr. 528-29.) The properties are situated thirty to sixty minutes apart in locations between Chattanooga, Tennessee and Cobb County, Georgia. None of the properties are located in the same county as Dalton. (G. Watts, Tr. 535.) RCDI claims that G. Watts spends 10 hours each week on Agent business plus 10 hours each month visiting the properties. (RCDI Exh. 1.)

48. G. Watts also owns 50% of a construction company, Bermurr, Inc. ("Bermurr"). Bermurr is a company which builds moderate income housing. Bermurr has completed fourteen units and plans to develop twenty four additional lots in the future. (G. Watts, Tr. 530.) G. Watts asserts that he spends six hours per week on Bermurr matters. (RCDI Exh. 1 at 5.)

49. G. Watts also owns a 50% interest in a related financing company, Bermurr Financial, Inc. ("Financial"). Financial is a company established specifically for the purpose of arranging FHA financing for purchasers of Bermurr's units. (G. Watts, Tr. 532.) He testified that he spends about one hour each month on matters relating to Financial's business. (RCDI Exh. 1 at 5.)

50. G. Watts also owns 50% of G & B Properties ("G&B"), a real estate partnership that owns nine rental houses in Chatsworth, Tennessee. G. Watts also manages those properties. (G. Watts, Tr. 537-38.) G. Watts testified that this management function requires less than fifteen minutes each week.

51. He also owns a 25% interest in C&W Properties, a real estate partnership which owns a commercial parcel in Chatsworth, Georgia. The property is described as consisting of a total of six buildings and a shopping center. It is under long-term lease, except for one building which carries a five-year lease. C. Watts manages the property, including the collection of rents which are sent in by the tenants. He testified that he spends about fifteen minutes each week on C&W business. (G. Watts, Tr. 537-38.)

52. G. Watts also manages ADAC, an entity that leases two buildings to the Department of Health and Human Services: one in Dalton on a twelve year lease and one in Atlanta on a ten year lease. (G. Watts, Tr. 533-34.) The two buildings are owned in part by Watts Agent. G. Watts testified that the management of the buildings takes less time than the commercial properties that are managed by Watts Agent.[9] (G. Watts, Tr. 535.)

53. G. Watts also devotes a portion of his time to attending monthly meetings of boards of directors of the following banks: Environmental Services Bank in Dalton, Georgia; the Rossville Bank and Holding Company in Rossville, Georgia; and the Community Group Bank in Chattanooga, Tennessee. (RCDI Exh. 1 at 5; Tr. 540.) The meeting in Dalton lasts a half day. The meetings and commutes to Rossville and Chattanooga take 3 1/2 hours and 2 1/2 hours respectively. (RCDI Exh. 1 at 5-6.)

54. LCLP contends that G. Watts had testified in his deposition that he did not intend to divest himself of his various business interests and real estate investments. (LCLP's PFC at 19-20.) G. Watts also spends one day each week shooting skeets and there is no evidence that he will cease or curtail that activity. (G. Watts, Tr. 600.) Yet, in his sworn testimony, G. Watts broadly stated:

> I am in a position to do, and will do what is required to fulfill my commitment to devote fulltime (40 hours a week or more) to the new FM station.

(RCDI Exh. 1 at 5.) RCDI acknowledges that G. Watts now puts in a 70 hour week but denies that he intends to add a 40 hour increment without making adjustments to the non-broadcasting endeavors set forth above. (RCDI's RPFC at 2.) There was no comprehensive plan offered in evidence and there is no indication that G. Watts intends to hire any additional personnel to assume even some of his non-broadcast activities.

55. RCDI calculates, based on its own analysis of G. Watts' testimony, that he will work 25 hours on non-broadcast business. Such a schedule, if feasible, would leave 45 hours out of a "normal work week of 70 hours or more to devote to the proposed station." (RCDI's RPFC at 2-3.)

56. RCDI also notes that G. Watts sold his interests in two radio stations in Chattanooga, Tennessee (WYVY-FM) and in Fort Payne, Alabama (WFPA-AM) and that he also sold a dairy farm and an amusement business. (RCDI's RPFC at 3-4.) However, these divestitures do not rule out the possibility of sales for business reasons having nothing to do with paring down time in order to integrate into a new FM station. For example, the radio divestitures were in connection with reducing diversification demerits. And the time and price to sell out the dairy farm and amusement businesses may have been decisions driven by business and tax reasons. There are not enough facts presented by RCDI to draw any inference from those business liquidations.

Quality Of Evidence

57. The quality of the evidence relied on by RCDI for G. Watts' integration also is taken into account. The evidence regarding a 70 hour plus work week does not clarify whether G. Watts works 5, 6 or 7 days a week, or some variation. There were no sample calendar or diary entries or related documents that might corroborate the testimony. However, since it is, in a sense, an admission against interest, the fact is established that Mr. Watts works 70 hours or more each work week and he does not intend to remove himself from any of these activities. However, the quality of the evidence becomes a significant factor because RCDI seeks findings that Mr. Watts can perform several functions at the same time and still be a full time integrated owner. For example, RCDI asserts that G. Watts spends a full business day in Atlanta on non-broadcast business but also asserts that his time spent on the road is used to conduct RCDI radio and other business by cellular phone during the round trip between Dalton and Atlanta. Such a non-documented conclusion is too speculative to draw from such broad parole estimate-type evidence.

58. RCDI also takes issue with the accuracy of evidence presented by LCLP with respect to Bermurr's projected construction projects. (*See* Para. 48, *supra.*) RCDI asserts in its Reply brief that LCLP misrepresented the evidence in asserting that Bermurr was "in the process of developing 24 lots." (RCDI's RPFC at 5.) But a review of the evidence supports LCLP's recitation of the facts. G. Watts testified:

> Q. Do you have plans for future development?
>
> A. Another 24 lots, yes, ma'am. There are 24 in the first phase and there will be another 24 in the second phase.

(G. Watts, Tr. 532.)

Additional Integration

59. Calvin R. Means ("Means") will work full time as RCDI's manager of the new FM station. Means currently works as general manager of the local AM station, WLSQ. He supervises sales and billings at the AM station. He is the AM station's program director. (Means, Tr. 632.) Means is secretary, treasurer, a director and a 20% voting and equity shareholder of RCDI. Means has testified that he will have "front line responsibility" for all station operations and policies. (RCDI Exh. 2.)

60. Means was a promoter of the venture. He initiated the process for an FM frequency search in conjunction with RCDI's consulting engineer. Then he brought the engineer's findings to the attention of G. Watts. (G. Watts, Tr. 484-85.) Means then applied for the FM station in his own name. (*Id.*) Means drafted information for the Form 301 application relating to engineering and sent drafts to the engineer for comment. (Means, Tr. 641-42.) Means found the transmitter site through a business associate of G. Watts to whom G. Watts had directed Means. (Means, Tr. 643.) But G. Watts made the contacts with communications counsel and G. Watts and V. Watts reviewed the final entries made in NGRI's Form 301. (Means, Tr. 642.) Means was acting under the direction and supervision of G. Watts.

61. V. Watts proposes to work 20 hours per week as director of public relations. She is vice-president, a director and a 5% voting and equity shareholder of RCDI. She has recently resigned her position as an attorney with a Dalton law firm. (RCDI Exh. 3.)

Broadcast Experience

62. Since 1985, G. Watts has been active in the management of Station WLSQ(AM) in Dalton, Georgia when he was president and CEO of the station's licensee. The evidence supports the finding that he worked at least 20 hours per week on station business. (RCDI Exh. 1 at 2; G. Watts, Tr. 510; Means, Tr. 630, 648-49; and G. Watts, 519-20, 520-21, 523, 590-91.) G. Watts specifically testified to his routine contacts and activities on behalf of the station, including 10 hour weekly meetings with Means.

63. Prior to divestiture in September 1990, G. Watts participated in similar activities as president and CEO of the licensee of Station WFPA(AM) in Fort Payne, Alabama. He had owned 25% of WFPA's licensee. He also served as vice-president and a director of the licensee of Station WYVY(FM), Chattanooga, Tennessee from 1988 to 1989, where he also performed similar functions. G. Watts sold his 50% interest in Station WYVY's licensee in 1989. (RCDI Exh. 1 at 2.)

64. Means has been secretary, treasurer, director, and stockholder of RCDI since October 15, 1985, when it acquired the AM Station WLSQ. Means also has served as the AM's station general manager since that date. He was involved with the operations and business of Station WLSQ twenty hours per week on a day to day basis. (RCDI Exh. 2 at 2.)

65. Means also was secretary, treasurer, director, stockholder and general manager of Station WFPA(AM) in Fort Payne, Alabama from October 1, 1985 to September 1990 when the station was divested. (*Id.*)

66. Means was sales manager at Station WALV(FM) in Cleveland, Tennessee from March to October 1984. From 1976 to 1984, Means was station manager at WWID(FM), Gainesville, Georgia. From 1973 to 1975, he was station manager and program director at Station WFNE(FM) Forsythe, Georgia. (*Id.*)

67. Means was an announcer in 1973 at Station WGAU(AM) and WNGC(FM), Athens, Georgia while he was a student at the University of Georgia School of Journalism. In 1969, while on active duty in the United States Air Force, Means was a part-time announcer at Station KITY(FM), San Antonio, Texas. Previously, he was a part-time announcer at Station WKDK(AM) while attending college in South Carolina. (*Id.*)

68. Ms. Watts, as a licensed attorney, handled miscellaneous legal matters for Station WLSQ since October 1985. (RCDI Exh. 3.) RCDI does not offer any evidence to show how her legal work was related to broadcast operations or business.

Local Residence

69. The evidence establishes that G. Watts has resided in RCDI's proposed service area from 1949 to the present, "except when [he was] away at school." (RCDI's PFC at 26-27.) RCDI does not calculate the period of time into years and does not state the number of years that G. Watts was "away at school." The Presiding Judge ascribes 8 years of absence and therefore RCDI receives credit for forty two years of local residence for G. Watts within the service area.

70. It is unclear from the evidence relied on by RCDI how long G. Watts resided in Dalton, the community of license. (RCDI's PFC at 26-27.) He has resided in Dalton at his present address at 606 Valley Drive for four years - 1988 through 1991. (*Id.*) He also resided in Dalton for twenty three years from 1949 to 1972, although no address was given. (*Id.*) From 1972 to 1977, he resided on Trickham Road in Whitfield County and from 1977 to 1978 he resided on Old Keith Road in Eton, Georgia. RCDI will not receive local community credit for the seven year period from 1972 to 1978. Therefore, it is found that G. Watts resided in the Dalton local community for a period of twenty seven years.

71. RCDI asserts that Means has lived in Dalton or in the service area since July 1977. (*See* RCDI PFC at 33.) From the evidence offered by the applicant, Means is found to have resided in Dalton since 1987, or five years. Means is found to have resided in the service area, Murray County, from 1977 to 1987, or ten years. (RCDI Exh. 2 at 1; RCDI Exh. 5 at 1; Means, Tr. 637-38.)

72. Ms V. Watts has resided in Dalton since 1939 and she receives credit for local community residence of fifty two years. (RCDI Exh. 3.) RCDI also seeks credit for years prior to 1939 when Ms. Watts resided outside Dalton but within the service area. (RCDI's PFC at 37-38.) But since there are no years specified, RCDI will receive only a slight additional credit for her unspecified service area residences prior to 1939.

Civic Activities

73. G. Watts is an active member and former officer (Sergeant at Arms) of the Dalton Rotary Club; a board member of the Dalton/Whitfield County Chamber of Commerce; a board member, and member of the Office Committee of the Whitfield County Farm Bureau; a trustee and Annual Support Committee Chairman of the Whitfield Healthcare Foundation; a board member of the Dalton Salvation Army; and an active member and former Building Fund Chairman of St. Mark's Episcopal Church in Dalton. (G. Watts, Tr. at 601; RCDI Exh. 1 at 1-2.) However, there is no period of time ascribed to any of the civic activities for which RCDI seeks credit. (*See* RCDI Exh. 1 at 1-2; and RCDI's PFC at 27.)

74. In 1987, Means was a founder of the "Cross Plains Road Rallys" on behalf of the American Cancer Society. He was personally involved in the entire course layout, was stationed at checkpoints, and generally assisted persons in entering the event. Means attended at least ten meetings of one hour duration in planning the event and he spent twenty four hours in mapping the course. (LCLP Exh. 10 at 1; RCDI Exh. 2 at 1; Means Tr.; 613-16.)

75. RCDI also claims credit for Means' membership in Dalton's Downtown Business Association, the Dalton Chamber of Commerce, League of Women Voters, Porter's Mill Foundation, Multiple Sclerosis Society Dalton Walkathon Committee and the Kiwanis Club. (RCDI Exh. 2 at 1; RCDI Exh. 5 at 1.) But there is no evidence showing that Means was actively involved in those organizations. (*Id.*)

76. Means could receive credit for serving as Moderator of a Political Forum Committee but there is no date given and no specific location is mentioned except the "surrounding areas" of Dalton. (*See* RCDI's PFC at 34.)

77. Means also receives credit for his work on behalf of Georgia's Snowman Giving Tree in 1986. He devoted four hours over several weekends to staff a booth and receive donations. He also recorded a public service announcement that was used throughout Georgia. (LCLP Exh. 10 at 3., Means, Tr. 618-20.) But there is no evidence showing whether the work was done in the community of

or in the "surrounding areas." Nor does the evi- reflect that the public service announcement was sociated with Means' broadcasting at the station in he was part-owner.

imer Preference

RCDI has operated Station WLSQ(AM), a daytime in Dalton, Georgia, since October 15, 1985. Sta- /LSQ(AM) operates pursuant to postsunset service ization[10] with only 72 watts at night. (G. Watts, Tr. eans, Tr. 638; RCDI Exh. 1 at 2.)

iliary Power

RCDI pledges to install emergency generators as re required to operate the station upon any failure commercial power supply. (RCDI Exh. 1 at 6; and thereto.)

CONCLUSIONS OF LAW

Section 307(b) of the Communications Act requires ir, efficient and equitable distribution" of broadcast and an assessment of the evidence must be made the applicable Commission standards in determin- hich applicant meets the statutory standard. *See Statement On Comparative Broadcast Hearings*, 1 2d 393 (1965).

The primary concerns under the Act are: (1) maxi- diffusion of control of the media of mass commun- ns or diversification; and (2) best practicable to the public. *West Michigan Broadcasting Co.* v. 735 F.2d 601, 603-07 (D.C. Cir. 1984). Thus, rative credit will be awarded to applicants which thout other media interests. The "best practicable " standard includes the integration of ownership anagement and the enhancement of such integra- y local residence, civic activities, broadcast exper- ınd minority and female gender preferences.

parative Proposals

There are no basic qualifying issues remaining any of these applicants.[11] But where substantial ıns have been raised about an integration proposal, *a fides* will be considered under the standard com- e issue. *See, e.g., N.E.O. Broadcasting Company*, 103 2d 1031, 1035 (Review Bd 1986). Here there is ıtial evidence to consider on the issue of LCLP's tion proposal insofar as the potential control held ital over its prosecution, and whether RCDI's pro- or integration of its CEO should be credited.

Diversification

ither LCLP, nor NGRI, nor RCDI owns an at- e interest in a means of mass communications. P's PFC at 35-36; NGRI's PFC at 25; and RCDI's 9 (each applicant proposes the conclusion that should receive a diversification demerit). There- arty receives a diversification credit or demerit. *ement On Comparative Broadcast Hearings, supra*

Comparative Coverage

84. The parties were required to submit evidence on comparative coverage because such evidence was called for under the *HDO*. A joint engineering exhibit which was received in evidence showed by substantial evidence that there were no significant differences between the proposed coverages of the areas and populations within the respective Grade B Contours and the availability of other primary aural services of Grade B or greater intensity. (*See* Para. 6, *supra*.) Accordingly, no party receives a comparative credit for a superior proposed signal coverage.[12]

Best Practicable Service

LCLP

85. LCLP filed as a limited partnership under the direction and control of Ms. Lowrey. She had achieved her status of general manager through the solicitation of Capital's agent. She paid $5,550 to Capital for a 24.95% equity interest. She participated with Capital's agent in soliciting fourteen limited partners and she used engineering services that were arranged for, paid for, and initially instructed by Capital. Lowrey also delivered or assisted in the delivery of $82,000 to Capital as an escrow agent, which monies were converted by Capital for use in a comingled account with other unrelated ventures. Capital did make distributions on behalf of LCLP. Lowrey ultimately terminated Capital's services and she obtained the return of unused funds. But there has not been a satisfactory final accounting and there remains a dispute over an unpaid sum of $20,750. Lowrey otherwise controlled the prosecution of the application, including the selection and direction of communications counsel and an engineer, the selection and negotiation of a second site, and the preparation of a budget and the securing of a financial commitment. Capital received no equitable interest in LCLP. There was no agreement to later assign the license to Capital. Capital now has no connection with or interest in LCLP's application.

86. The Commission has held with respect to two-tier applicants that the applicant has the burden to prove with reliable evidence "that nominally controlling principals will in fact exercise control." *Royce International Broadcasting*, 5 F.C.C. Rcd 7063, 7064 (Comm'n 1990), *recon. den.*, 6 F.C.C. Rcd 2601 (Comm'n 1991). The facts summarized above are sufficiently reliable to show that notwithstanding Capital's promotional involvement and its services as the applicant's agent in providing initial engineering and "escrow" services, Lowrey's conduct as general partner shows that she "will in fact exercise control." *Id.* The ultimate fact that supports the conclusion of Lowrey's full and complete control over the integration proposal is the irrefutable power that she exercised in discharging Capital in October 1989 when she became dissatisfied with Capital's services. If Capital could have exercised direct or indirect control there would have been no termination of the service contract.

87. The Presiding Judge has considered the Commission's additional criteria which support LCLP's claim for 100% integration credit: (1) Lowrey holds a significant 24.95% equity interest; (2) Lowrey's equity interest is considerably greater than any of the fourteen limited partners and there is no evidence of any limited partner exercising any control at anytime or of being in a dominant position; (3) Capital has no undisclosed ownership

interest nor a contract of understanding for a future transfer of an interest in LCLP or in any successor licensee; (4) after the promotional organization of LCLP and the execution of a formal partnership agreement in October 1988, Capital remained under a service contract as an agent of LCLP; and (5) the proposed integrated manager, Ms. Lowrey, has exercised significant control in connection with the filing and prosecution of the application, she has discharged Capital for failure of performance under a service contract, and she has shown a real prospect of continuing to exercise such control to the exclusion of Capital. However, while Lowrey was in control, Capital had the power and the potential to substantially share in that control until its contract was terminated. *Cf. Royce, supra.*

88. But Lowrey was not a front for Capital in the tradition of the typical "sham." For example, the Commission held that an applicant had failed to meet its burden of proof for a claimed integration credit when the purported controlling general partner was only a 15% equity owner and a "casual" member of the venture. *Fresno FM Limited Partnership*, 6 F.C.C. Rcd 6998 (Comm'n 1991). In that case the general partner, Cruz, had not negotiated his ownership share or the term of the limited partnership agreement. Nor had he investigated the limited partners. The limited partners also had not investigated Cruz for his character, business or financial qualifications. Also, Cruz contributed no capital and was uncertain as to the extent of his personal liability. In contrast, Lowrey paid $5,550 and signed a contingent promissory note for $17,500 in return for a 24.95% equity interest. She assisted in successfully soliciting each limited partner and each was a local Dalton resident who was acquainted with Ms. Lowrey. Lowrey also solicited checks from the limited partners before the partnership agreement was executed. Thus, neither Lowrey nor the limited partners were dealing with strangers. The affidavits of the limited partners relied on for summary decision support their continued confidence in Lowrey and attest to her continuing control. It is also noted that there was no request by LCLP's opponents to call any of the limited partners for cross-examination in Phase I.

89. Nor is there a sustainable theory to support a finding of undisclosed control by Capital to the exclusion of Lowrey because there is no evidence of an agreement to transfer control. As indicated above, Capital was an agent that was contractually obligated to LCLP to arrange for and provide specified turnkey services. Capital's services included advice on a suggested form for conducting business, i.e., limited partnership. Lowrey was solicited by Capital to purchase Capital's services and to serve as manager for the venture. She agreed to serve in that capacity on September 14, 1988. (NGRI Exh. 18.) At that point in time, the venture was still in its promotional stages. Thereafter, between September 14 and September 20, 1988, Lowrey and Capital's agent solicited fourteen investors with background questionnaires furnished by Capital and with passive investor agreements entered into between each individual and Capital. The agreements, separately executed by each investor (NGRI Exhs. 5 to 17), reflect that Capital shall obtain the Owner/Manager and that Capital shall provide turnkey application services to the Owner/Manager in connection with an application to be filed with the Commission (*Id.*). Thus, the investors parted with their investment monies in reliance on Capital's ability to select a manager and provide turnkey services. The cover letter from Hurlebaus to i dated October 3, 1988, forwarding signed copies individually executed passive investor agreements, each investor that:

> As soon as the Owner/Manager [Lowrey][13] anc attorney for your group have structured your ership entity (*e.g.*, limited partnership) you wi notified - - -.

(*See e.g.*, NGRI Exh. 12.) Thus, before the form the legal entity that intended to file an app through the efforts of an Owner/Manager and lega sel, Capital provided pre-formation promotional ganizational services. *Cf. Coast TV*, 5 F.C.C. Rc 2752 (Comm'n 1990) and *Magdalene Grunden Par* 6 F.C.C. Rcd 5976, 5977 (Comm'n 1991) ("pos tion" involvement by passive owners is conside volvement in the application process that considered for comparative integration credi Capital's services through October 3, 1988, we formation and Capital was not an equity own contemplated equity owner. Rather, Capital was or ing as agent-contractor under an Owner/Manager ment. Thus, the standards for assessing a com integration demerit under the owner-attribution pr of *Coast TV* and *Magdalen Grunden, supra* do not this case.

90. Between October 3, 1988, and October 1 Lowrey had acted on the advice of Capital and s sulted with and later retained a communications referred by Capital but selected by Lowrey to fo the limited partnership. The limited partnershi ment was executed by the limited partners betwee ber 10 and October 12, 1988. (LCLP Exh. 1 at 50 is no evidence of Capital's officers or agents parti in the formulation of LCLP. The only "post-for services rendered by Capital after October 12, 1 volved an engineering site that Lowrey ultimately as inadequate and "escrow" services for the ir funds under an informal arrangement which fa comingling and conversion.[14] Those activities do tract *de facto* from LCLP's ability to carry out its i integration plan of 100% integration for Ms. Lowr

91. The Commission's standard for accepting an tion proposal as an ultimate conclusion is as follo

> Integration credit is due when the applicant forth a specific integration proposal; the app adheres to that proposal; and there is reasc assurance that the plan will be carried out.

Coast TV, supra at 2752, citing *Bradley, Hand &* 89 F.C.C. 2d 657, 652 (Review Bd 1982). LCLF Lowrey and LCLP's communications counsel, h lated the legal entity of a limited partnership w as general partner before LCLP filed its applic 301. LCLP's application proposed Lowrey as partner who held 100% of the voting power. no deviation from that proposal. To the Capital's services as "escrow" agent raised any *de facto* control that could detract from Lo integration, that concern became moot by the of Capital by Lowrey on August 24, 1989. Ar evidence that between October 26, 1988, an

1989, Capital exercised or attempted to exercise any decisional control over the prosecution of LCLP's application.[15]

92. But NGRI and RCDI argue that Capital was exercising *de facto* control over the payout of funds[16] to meet expenses after the "B" cut-off date, February 13, 1989. They further argue that as a holder of Lowrey's note, Capital had a stake in the success of LCLP's application. They also rely on a provision of the Agreement which prohibits any resale of any application provided by Capital without Capital's consent. (NGRI Exh. 18.)[17] The opposing parties rely on *Doylan Forney*, 5 F.C.C. Rcd 5423, 5424-25 (Comm'n 1990) which held that the interests of limited partners who had rendered legal services after the "B" cutoff would be attributable to integration. *See also Marlin Broadcasting of Central Florida, Inc.*, 65 Radio Reg. 2d (P&F) 1043-44 (Review Bd 1988) (post-trial merger requires full consideration of new agreement to determine whether there should be a down-grade in post "B" cutoff integration credit). If Capital were a limited partner, its control over the partnership's funds would have violated *Doylan Forney*. The same result should apply here where Capital was exercising unquestioned control over LCLP's funds until October 1989, a date well after the "B" cutoff, and LCLP has failed to show by substantial evidence, i.e. failed to meet its burden of proof that Lowrey directed Capital and Hurlebaus on the maintenance and disbursements of LCLP's funds. *Cf. Rebecca Boedker, supra* at 2558 (control is lost when a manager fails to have the "last say" on major decisions).

93. There is no evidence that Capital had in fact exercised any decisional control over the application. But the test applied by the Commission is whether a person "*is in a position to exercise significant control over the applicant.*" *See Royce International, supra* at 7064. (Emphasis added). As a result of the undefined arrangement whereby Capital controlled the converted partnership monies in a comingled account, done with the acquiescence of LCLP, Capital is found to have been" *in a position*" to exercise significant control. *Cf. Oliver Kelley and Mary Ann Kelley*, 6 F.C.C. Rcd _____, Review Bd *Slip Op*, FCC 91R-110, released December 16, 1991 (applicant relied on service consultant who was paid to find a channel, prepare application, locate site and provide information about equipment costs). But that case involved a situation where an applicant paid a fee to a technical consultant whose service ended with the completion of defined tasks and the consultant had no stake in the outcome. And one Board Member concurred only "reluctantly" in awarding full integration credit on that case's narrow record and in an "extremely close call." *Id.* (Separate Statement of Board Member Eric T. Esbensen). *See also Rebecca Boedker, supra* at 2558 (control is lost where manager gives up her "last say" on important matters).

94. A further review of the evidence places this case just beyond the pale of the favorable holding in *Oliver Kelley*. This is not a case where Lowrey decided to apply for the station and sought out a technical consultant to assist on specified tasks. Here, Capital was actively promoting the venture and searched out Lowrey to offer to her the job of Owner/Manager. For the privilege of serving in that capacity, Lowrey paid $5,550 in cash and signed a note payable to Capital in the amount of $17,500 which would be due in that amount only if LCLP was the winner or received a settlement. Thus, Capital had a stake in the venture's outcome while the consultant in *Oliver Kelley* had none. And Capital was active in soliciting the investors to support the venture while the consultant in *Oliver Kelley* did not assume an entrepreneurial role. Capital, not Lowrey, decided that $100,000 would need to be raised. (Lowrey, Tr. 173-74.) Capital obtained the list of prospects from Lowrey's father and an acquaintance and then Lowrey joined Caldwell in fund raising efforts. (Lowrey, Tr. 296-99, 371, 375-76.) This evidence shows Capital to be more than just a technical consultant. Capital was the primary promoter.

95. Neither the Owner/Manager Agreement signed by Lowrey nor the Passive Investor Agreements signed by the fourteen investors contained any provision which gave any of the partners a right to direct Capital on the use of funds or to require an accounting. (NGRI Exhs. 17, 18.) Rather than Capital being contractually obligated to report to LCLP, Lowrey obligated the venture to:

> provide in a timely fashion when requested by Capital full, accurate and complete information concerning your legal, technical, managerial, financial and other qualification to obtain the requested broadcast authority.

(NGRI Exh. 18 at 2.) While there is no evidence of that provision being complied with, the quoted language is evidence of the parties agreeing to place Capital "in a position to exercise significant control." *Royce International, supra.* As indicated above, Hurlebaus directed use of the monies without instructions from Lowrey and there had never been any formal documentation to evidence a "trust" or "escrow" account. (Lowrey, Tr. 314-17.)

96. In the case of *WLOX Broadcasting Co.* v. *F.C.C.*, 260 F.2d 712 (D.C. Cir. 1958), 17 Radio Reg. (P&F) 2120 (D.C. Cir. 1958), the Commission found control in a 1.5% equity owner who had loaned the applicant its construction funds and took as collateral 55% of the voting stock, although he agreed not to exercise the voting power. The court held:

> [A] stockholder [is a control principal] who is to furnish all the money to his corporation for the construction of a television station and to take part in determining the necessity for advancing it as the work progresses, and is to furnish all the money for the first year's operation, receiving weekly financial statements and giving financial advice - - -.

WLOX, 17 Radio Reg. (P&F) at 2123. By analogy, Capital had similar powers to disburse partnership funds without accounting for expenditures and in its contractual right to receive reports from Lowrey on the status of the application. (*See* Para. 95 above.) *See also Heitmeyer* v. *F. C. C.*, 95 F.2d 91,99 (D.C. Cir. 1937) (control of finances is a most effective method to control a business). More recently, the Commission has held that financial arrangements "without more" do not prove influence or control. *Dorothy J. Owens*, 5 F.C.C. Rcd 6615, 6617 (Comm'n 1990). But here, where Capital acted as entrepreneur, had contractually reserved the right to prevent an assignment of the application and to receive periodic progress reports, and had an interest in LCLP's success, the "more" required by the Commission is found to be present.

97. Lowrey and the fourteen limited partners signed agreements with Capital which were formulated by Capital. Lowrey's Owner/Operator Agreement conceded that Capital had the right to be informed on material matters involving the progress of the application and Lowrey was obligated contractually to furnish such information. There was no termination date. Capital made decisions on expending $82,000 in venture funds that Lowrey and LCLP had entrusted to Capital by parole arrangement. Capital's unfettered control over those funds went beyond the "B" cutoff and Lowrey's obligation to report to Capital under the Owner/Operator Agreement had not terminated. Such a structuring of a contract with Capital, comingled with the absolute control over the funds needed to prosecute LCLP's application that was assumed by Capital with LCLP's consent on and after the "B" cutoff, suffice to deny LCLP any credit for Ms. Lowrey's proposed 100% integration. *See Progressive Communications, Inc.*, 5 F.C.C. Rcd 7058-59 (Comm'n 1990) (integration proposal completely discounted because one with no formal interest was in a position to exercise significant control). Conversely stated, the burden of proof was with LCLP to establish that it had adhered at all times to its integration proposal. By ceding inchoate control power to Capital in the manner described above, LCLP has failed to meet its burden of proof. *See Cuban-American, Ltd.*, 5 F.C.C. Rcd 3781, 3785 (Comm'n 1990).

98. While this conclusion effectively removes LCLP from further comparative consideration, there is no finding of a basic disqualification. *Cf. Ocean Pines LPB Broadcast Corp.*, 5 F.C.C. Rcd 5821, 5826-27 (Review Bd 1990) (two Members issued Separate Statements in which they advanced their views that real party-in-interest issues inherently contain subsumed element of deceit). *Cf. also Shawn Phalen*, 7 F.C.C. Rcd _____, Review Bd *Slip Op.* FCC 92R-1, released January 23, 1992, at Paras. 18-19 (real party-in-interest issue triggers basic character inquiry). LCLP is not disqualified for its failure to disclose Capital as a real party-in-interest because the facts are found in this case as establishing that LCLP and Lowrey never intended Capital to have any decisional control or influence in the station's operation and Capital has no equity in LCLP. Therefore, the evidence would not support a finding that LCLP or Lowrey had intended to deceive the Commission concerning Capital's role in the application. And the conclusion reached here to deny totally any credit for LCLP's integration proposal because Capital was left in a position "to exercise significant control over the applicant" is consistent with current Commission case law. *See Evergreen Broadcasting Company*, 6 F.C.C. Rcd 5599, 5600 (Comm'n 1991). Therefore, since it is basically qualified, LCLP's proposal will be contingently compared in the event an appellate authority rules that LCLP qualifies for the 100% quantitative integration of its proposed general partner, Jean S. Lowrey. (Para. 23, *supra.*) Related qualitative comparisons are made below.

NGRI

99. NGRI is a substitute corporation. But the substitution was made before the "B" cutoff. (Para. 33, *supra.*) NGRI's application, as amended, continues to meet the requirements under Section 73.3573(b).[18] The original shareholders remain the same. The only change is with respect to Wortsman now holding 100% of the voting stock. The change was made to allow NGRI to claim 100% integration for Wortsman's position as full-time general manager. Wortsman previously had owned 40% of the voting stock. The increase in voting shares does not effect his equity ownership which remains at 40%. NGRI may structure its proposal in a manner that it believes is most likely to prevail in a comparative proceeding. *KIST Corp.*, 102 F.C.C. 2d 288, 292 n.9 (Comm'n 1985), *aff'd sub nom. United Telecasters, Inc.* v. *F.C.C.*, 801 F.2d 1436 (D.C. Cir. 1986).

100. There is no question raised about the timeliness of the amendment. And the Commission has permitted an applicant to increase an individual's ownership to 100% by post-designation amendment. *Marlin Broadcasting of Central Florida.*, 5 F.C.C. Rcd 5751, *recon denied*, 5 F.C.C. Rcd 7446, *aff'd* _____ F.2d _____ (D.C. Cir. January 7, 1992). In that case, the Commission affirmed the Review Board's conclusion to treat a husband and wife as *de facto* 50%/50% general partners notwithstanding a "B" cutoff amendment that structurally gave the wife 95% of the ownership. *Marlin Broadcasting*, 4 F.C.C. Rcd 7945, 7949 (Review Bd 1989). But the amendment was not ruled to be technically illegal as a result of an increase of the female's ownership from 51% to 95%. *Id.* And there is no evidence in this case that Wortsman is *de facto* less that a 100% manager-owner insofar as control is concerned. Therefore, NGRI, through Wortsman, is entitled under the principle of law analyzed in *Marlin Broadcasting* to 100% credit for its integration proposal.

RCDI

101. RCDI, however, is not entitled to any integration credit for Gilbert H. Watts, Jr. The preponderance of the evidence fails to show that Mr. G. Watts has a plan in place for extricating himself from his interests in and duties to Watts Agent, Bermurr, G&B Properties, C&W Properties, ADAC, Hasty & Watts and Y&W Properties businesses, as well as his memberships on the boards of directors of three banks in Georgia and Tennessee, so that he could devote full-time to the integrated management of RCDI's proposed station as its proposed "CEO." (Paras. 46-56, *supra.*) Nor is the evidence sufficiently complete or precise to determine how G. Watts would fully integrate into station business as a "CEO." Therefore, RCDI has failed to meet its burden of proof. *See Cuban-American, Ltd.*, *supra.*

102. G. Watts asserts that he works 70 hours per week. There is no evidence to refute his claim. He does not intend to withdraw from the active management of these interests. But there is not any substantial evidence offered that documents how he is able to consistently manage all the properties and attend interstate bank board meetings. There must be times when some responsibilities are deferred while more pressing matters are addressed. There has been no plan adopted that would substitute some other person for G. Watts in meeting such *ad hoc* problems in the management of these other extensive business interests. Thus, there is no reasonable assurance established by RCDI that G. Watts will work 40 hours or more each week at the station. (*Id.*) Nor does the quality of the evidence offered by G. Watts convince the fact-finder that G. Watts can fulfill all of his business duties, even if he reduces these to 25 hours per week, and still be able to meet a weekly commitment of 40 hours or more to the station's management. (Paras. 55, 57-58, *supra.*)

103. The story told by G. Watts also has intrinsic inconsistencies. He denies that he plans to develop 24 new housing plots through Bermurr even though he testified that he had such a plan. (Para. 58, *supra.*) And RCDI claims to be entitled to full-time integration credit for G. Watts' peripatetic management style while the hands-on day-to-day management will be performed by Calvin R. Means who also is now the full-time manager of the applicant's local AM station. (Paras. 59-60, *supra.*) Means is proposed to manage both stations on a full-time basis until the AM station is divested. Such divestment may take as long as three years from the start of broadcasting on the FM signal. (Para. 12, *supra.*) Yet there is no plan offered to show how his present full-time management duties at Station WLSQ, which would continue while the FM station was constructed and for three years after test signal, can be reduced to permit Means to meet a second full-time "first line responsibility." (Paras. 12, 59, 64, 78, *supra.*)

104. Ms. Valeria W. Watts is a 5% owner. RCDI is entitled to credit for V. Watts' commitment to work 20 hours per week as the station's director of public relations. (Para. 61, *supra.*) But the uncertainties, inconsistencies and inconclusiveness of the G. Watts and Means proposals requires the rejection of 95% of RCDI's integration. Under Commission precedent, applicants have an affirmative burden of establishing how they will make a specific record showing of how outside interests will be accommodated. *See Kennebec Valley TV, Inc.*, 2 F.C.C. Rcd 1240, 1241-42 (Review Bd 1987).

105. The evidence offered by RCDI pertaining to the proposed involvements of G. Watts and Means does not make such a showing under *Kennebec Valley, supra.* With respect to G. Watts' promise to reduce outside business interests, from 70 hours to 25 hours, it has been held:

> The Board's routine practice is to find that generalized promises to "diminish" the time spent on a significant business interest is insufficient. [Citations omitted.] In that regard, a blanket pledge to hire more employees and diminish hours spent is not enough: we have no way to check afterwards, and were we to accept such promise where significant business interests remain, all comers would receive full-time credit.

Naguabo Broadcasting Company, 6 F.C.C. Rcd 912, 924 n.63 (Rev. Bd. 1991), *aff'd*, 6 F.C.C. Rcd 4879, 4880 (Comm'n 1991). The need for proof beyond promises and projections was emphasized in a later case wherein the Review Board held:

> - - - integration credit has been denied to applicants with significant interests because, quite obviously, "the very existence of [any] other interests renders questionable [the integration] commitments in the absence of an additional showing by the applicant of the reliability of its integration proposal . . . ." *Blancett Broadcasting Co.*, 17 F.C.C. 2d 227, 230 (Rev. Bd 1969) (emphasis added). [Subsequent citations omitted.]

Pleasure Island Broadcasting, Inc., 6 F.C.C. Rcd 4261, 4165 (Review Bd 1991). The Review Board has recently applied these authorities in denying an applicant any integration credit where the applicant had

> - - - made no weighty showing at all, let alone a persuasive one, as to how he will spend 50-60 hours per week managing a fledgling station in Orange Beach, while devoting (he says "only") 15 hours a week to another significant business concern - - -.

Id. See also Shawn Phalen, supra at Paras. 29-31.

106. In the final analysis, the Commission has held that "[a]pplicants have the burden of proof to establish how they will effectuate their integration proposals." *Cuban-American Limited*, 5 F.C.C. Rcd 3781, 3785 (Comm'n 1990); *Julia S. Zozaya*, 5 F.C.C. Rcd 6607 (Comm'n 1990) (applicant retaining business interest denied integration credit). *See also Berryville Broadcasting Co.*, 70 F.C.C. 2d 1, 11-12 (Review Bd 1978). In this case, RCDI has offered no "demonstrative evidence" or "convincing plan" and has made no "weighty showing" to overcome the presumption that the retention of active rental properties will interfere with the 40 plus hours work week that G. Watts proposes to spend on station business. *See Blancett Broadcasting, supra* and *Pleasure Island Broadcasting, supra. See also Naguabo Broadcasting Company*, 6 F.C.C. Rcd at 4880 (need for detailed accounting noted where other business interests readily lend to freely dividing time between a local business and the station business). In this case, where Mr. G. Watts expects to be out and around managing rental properties and planning for the development of 24 tracts of land, and attending directors' meetings in two states, this stricture of the Commission in *Naguabo* is particularly applicable. And with respect to Mr. Means, there is no plan to show how he will be a "front-line" manager for two stations while the FM station is being constructed and for three years after the test signal is operative. Therefore, RCDI receives credit only for V. Watt's integration proposal for only 20 hours per week.

Contingent Comparative Conclusions

107. If LCLP was entitled to 100% integration credit it would be the clear comparative winner. Ms. Lowrey would receive an enhancement for her female gender. With the exception of seven years, she lived in Dalton all of her life. (Para. 25, *supra.*) During that time, she served as secretary to a board of volunteers, she was a member of a board, committee member and representative for various local civic organizations. (Paras. 26-29, *supra.*) She is entitled to recognition for thirteen years of local civic activity. NGRI is the next ranked applicant with 100% integration with a lesser record of civic involvement. Wortsman receives credit for five years of civic work as reader and lecturer at the local Dalton Public Library and as a member of the board of directors of the Art Guild in 1975. (Para. 37, *supra.*) He receives no credit as a member of Temple Beth El because there is no evidence that he was involved in any community oriented Temple activities. *Cf. Newton Television, Ltd.*, 3 F.C.C. Rcd 553, 556, (Review Bd 1988) (civic credit awarded where community activities were ancillary to church membership). Wortsman's civic involvement is more remote in time than are the activities of Ms. Lowrey. Nor is Wortsman

entitled to credit for awards received in 1973 where there is no evidence offered of the nature of the services that related to the awards. *Id.* Thus, Lowrey's almost lifetime local residence coupled with her substantially better record of civic activities, as enhanced by her feminine gender, outweigh the enhancement to NGRI for Wortsman's superior broadcast service.[19]

108. On the further contingency that RCDI is awarded credit for the integration of Mr. Means as a full-time general manager, notwithstanding his interim dual employment as manager of Station WLSQ, his 20% interest in RCDI would be added to V. Watts' 2.5% interest[20] to achieve only a 22.5% integration credit which is far below NGRI's 100% integration. There is no need to consider further the involvement of G. Watts' 75% interest since the Review Board has held categorically that non-specific commitments will not be fully credited. *Vacationland Broadcasting Co., Inc.*, 97 F.C.C. 2d 485 (Review Bd 1984), *Shawn Phalen, supra.*

109. Even if RCDI were awarded only a slight credit for G. Watts' 75% interest, it would not approach the full 100% integration awarded to NGRI. RCDI would receive comparative preference for owning an AM "daytimer" notwithstanding the change in ownership by virtue of the corporate reorganization that was effected on December 23, 1988. (Paras. 42-44, *supra.*) In order to qualify for an AM "daytimer" preference, the licensee/applicant must have owned the AM station for three continuous years prior to the designation of the FM application for hearing. *See FM Broadcast Assignments*, 101 F.C.C. 2d 638, 646 (Comm'n 1985). The ownership of AM Station WLSQ remained substantially the same with the same shareholders and *de facto* control by G. Watts. It was not materially changed less than two years before the case was designated for hearing. Therefore, RCDI would receive a daytimer credit based on substantially the same reasoning as applied above in accepting NGRI's reorganization. *See* Paras. 99-100, *supra.* But without a 100% integration credit, RCDI still finishes last. And RCDI would receive a comparatively lesser credit for local residence/civic involvement because it failed to prove the relevant dates of G. Watts' civic activities. *See* Para. 73, *supra.* Lowrey's local residence of 31 years, coupled with significant civic involvement and her female preference would exceed the credit awarded for G. Watts' 42 years of local residence without attributing those years to civic activities. And RCDI's broadcast experience receives less credit than LCLP's local residence/civic activities/female preference.

Summary Conclusions

110. All three applicants receive equal credit for diversification and auxiliary power. LCLP receives no integration credit as a matter of law and RCDI receives only a 2.5% integration credit for V. Watts. Therefore, NGRI is the comparative winner with 100% integration. Alternatively, if LCLP were awarded 100% integration it would be the winner because of Ms. Lowrey's long-term local residence coupled with her comparatively substantial civic activities and female preference. NGRI would finish second and RCDI would receive a third place ranking because of its failure to prove with specificity how G. Watts' 75% ownership interest would be integrated or how Means would be a "front-line" manager for two stations.

ORDER

Based on the foregoing, IT IS ORDERED that unless an appeal from this *Decision* is taken by a party, or unless the Commission reviews this *Decision* on its own motion,[21] the applications of Lowrey Communications, L.P. (File No. BPH-881026MO) and Radio Center Dalton, Inc. (File No. BPH-881026MK) ARE DENIED.

IT IS FURTHER ORDERED that the application of North Georgia Radio II, Inc. (File No. BPH-881026MD) for authority to construct a new FM Station on Channel 283A in Dalton, Georgia IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Richard L. Sippel
Administrative Law Judge

FOOTNOTES

[1] There was extensive discovery conducted between the adding of the issues on May 22, 1991, and the conference of September 23, 1991. Records of non-parties were subpoened, depositions of Mr. Carl W. Hurlebaus, Styles E. Caldwell and others were taken, and follow-up efforts were made to decipher deposits and withdrawals in a commingled checking account. *See Order* FCC 91M-2693, released September 3, 1991, and *Order* FCC 91M-2853, released September 17, 1991. In the interest of obtaining *all* relevant evidence, the computerized billing data of LCLP's counsel were ordered disclosed to opposing counsel. *Id.*

[2] LCLP seeks a gender preference for Ms. Lowrey's integration into management.

[3] The evidence is not sufficiently clear to conclude that Capital rather than Lowrey selected the limited partnership structure. There was an undated document generated by Capital to the LCLP investors which advised that the "partnership" would contract with Capital "to turnkey the preparation and prosecution of the application for the new FM broadcast frequency allocated to Dalton." *See MO&O* at Para. 9. Lowrey contends that she had approved the partnership structure before that communication was sent by Capital. LCLP limited partners substantially supported Lowrey's contention in their after-the-fact affidavits offered in support of LCLP's motion for summary decision. *Id.* But there are no contemporaneous documents to show that Lowrey made the selection of the limited partnership vehicle without advice from Capital.

[4] The note's obligation was contingent on success in obtaining a grant or a payoff by settlement that exceeded the face amount of the note. The terms of the note provided:

> This Note shall at once become due and payable, at the option of the holder hereof, upon the occurrence (1) the receipt of cash proceeds to your account (from settlements, mergers, buyouts, etc.) in excess of $17,500, or (ii) the receipt of operating profit distribution from the Station (which shall not include employment compensation) in excess of $17,500, or (iii) the sale of all or substantially all of the assets of the Station or the construction permit for the Station, provided that such sale results in net proceeds to your account in an amount exceeding this note. In the event that the applicant group is unsuccessful in obtaining an FCC construction permit for a new FM broadcast license in the community for which it applies,

> then Jean S. Lowrey may satisfy payment of this note in full by paying the sum of one-hundred dollars ($100) within thirty (30) days of a Final Order by the FCC denying the Construction Permit to your group. No interest or other consideration shall be required.

(North Georgia Exhibit 19.) It appears from the face of the note (NGRI Exh. 19) that Ms. Lowrey was paying from personal funds only her initial investment of $5,550.

[5] While the added issues regarding Capital's alleged control over the application were resolved in favor of the applicant LCLP, the adverse parties were permitted to file Supplemental Points and Authorities on the question of integration credit to be awarded to LCLP. LCLP also was permitted to file Supplemental Opposing Points and Authorities. *See Order* FCC 91M-3457, released December 16, 1991. Those matters are considered in the Conclusions of Law below. *See* Paras. 85-98, *infra*.

[6] These activities occurred within LCLP's service area. (*See* LCLP Exh. 3 at 2-3.)

[7] Lowrey pledges to leave her employment as Executive Director, Dalton Education Foundation, Inc., if LCLP receives the grant. (LCLP Exh. 3 at 5.)

[8] Trustees of the Whitaker Trust are Lewis S. Whitaker and Myrna N. Whitaker.

[9] There is a general reference in a summary of LCLP's PFC to another venture called "Hasty & Watts." (*See* LCLP's PFC at 19.) There is no reference to a "Hasty & Watts" in RCDI's hearing exhibit. But the testimony of G. Watts refers not only to "Hasty & Watts" but also to "Y & W" Properties. (G. Watts, Tr. 542.) These business operations of G. Watts cannot be determined with a sufficient degree of reliability.

[10] *See* §73.99 of the Commission's Rules, 47 C.F.R. §73.99.

[11] As indicated above, Paras. 3-4, the issues added by the Presiding Judge on the basic qualifications of LCLP, i.e., whether Capital was an undisclosed real party-in-interest and whether LCLP was a "sham" applicant, were resolved earlier by the Presiding Judge's Summary Decision. *See MO&O* (FCC 91M-3360), released December 2, 1991 and Paras. 16-22, *supra*.

[12] The stipulation was based on an affidavit of a qualified engineer who affirmed, under oath, that he reviewed the engineering sections of the respective applications, that he plotted the 60 dBu field strength contours of the three competing applicants on a single 1980 census map, and that he concluded from his review that there are no significant differences in the areas and populations proposed to be served. (Jt. Eng. Exh. 1.)

[13] By October 3, 1988, Lowrey was serving as the Owner/Manager since she had signed an agreement to serve in that capacity on September 14, 1988. (NGRI Exh. 18.) She also had made her payment of $5,050 and she had contingently committed herself to pay an additional $17,500. (NGRI Exhs. 18, 19.)

[14] The use of the investors' funds to receive and retain earned interest was a form of conversion. The monies were never intended to belong to Capital and as a *quasi* escrowee-fiduciary Capital had a duty to hold accrued interest for the benefit of the owners of the funds. But Lowrey testified that the escrow arrangement was made informally and as manager she was satisfied to rely on Capital's services without a formal escrow agreement until such services were terminated by Lowrey on October 26, 1988.

[15] NGRI and RCDI set forth excerpts from the Judge's Summary Decision ruling (FCC 91M-3360) that in certain respects appear to be taken out of context. *See* Supplemental Points and Authorities filed on December 20, 1991, at 1-2. The *MO&O* should be read in full and there will be no attempt here to place matters asserted by NGRI and RCDI in context.

[16] It was found in the *MO&O*:

> There is no evidence that Lowrey reviewed or was asked to approve any of the above disbursements before they were made by Capital. - - - Hurlebaus explained to Lowrey. "Here's what we typically do, is that okay?" Lowrey answered: "Yes", go ahead." (*MO&O* at 6.)

[17] The text of the Agreement states:

> You agree not to resell or provide any application provided by Capital to any other person or entity, without the express written permission of Capital.

(NGRI Exh. 18 at 2.) This language is ambiguous. It could mean that only in cases where Capital actually prepared an application would there be a prohibition of an assignment without Capital's consent. But it was Capital's boilerplate language which on its face does appear to contemplate Capital's control over assignments. Lowrey had the burden of proof to show that the prohibition did not apply and Lowrey offered no proof. Therefore, it is found that Capital had retained a contractual right to approve or disapprove of any replacement of Lowrey as Manager. *Cf. Rebecca Boedker*, 6 F.C.C. Rcd 2557 (Comm'n 1991). However, the right was never exercised and it ceased to exist with Capital's contract termination.

[18] Section 73.3573(b) [47 C.F.R. §73.3573(b)] provides that a new file number will be assigned to an application for a new station "where the original party or parties to the application do not retain more than 50% ownership interest in the application as originally filed." There was no objection to the amendment. Nor was any attempt made to have a new number assigned to NGRI's application while it was on the processing line. Nor would any such objection have succeeded because the original parties to the application, the same NGRI shareholders, continue to retain more than a 50% ownership.

[19] It is noted that NGRI has presented proof of Wortsman's 31 years of local residence while LCLP has only presented evidence of Lowrey's almost lifetime residence in Dalton. Ms. Lowrey's age was never established and therefore her lifetime residency does not prove a definitive number of years. However, it is noted that she claims broadcast experience for a student intern job in 1971. (Para. 24, *supra*.) Assuming that she was a college student of about twenty years of age, her current age would approximate forty years. Based on that estimate and an opportunity for the Presiding Judge to observe Ms. Lowrey testifying, it is concluded that she resided in Dalton about the same number of years as Wortsman, i.e., 31 years. Any further need for precision is mooted by the comparison of local residence and civic activities as a "unified comparative factor" under which Lowrey receives a substantial preference. *See Rebecca L. Boedker*, 6 F.C.C. Rcd 2557, 2559 (Comm'n 1991).

[20] Ms. Watts' will only spend 20 hours per week at the station. Therefore, an appropriate reduction of credit would be 50% of her full-time value as an integrated principal. This is a computational measure of integration credit and the Commission approves of such analysis. *See Omaha TV 15, Inc.*, 4 F.C.C. Rcd 730, 733-34 (Comm'n 1988). Since the other applicants receive 100% integration credit under the primary and the contingent analyses, there is no decisional need in this case to apply the more exacting HHI computational analysis.

[21] This *Initial Decision* shall become effective and this proceeding shall be terminated 50 days after its public release if exceptions are not filed within 30 days thereafter, unless the Commission elects to review the case on its own motion. 47 C.F.R. §1.276(d).